

**UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

Concessions Permit

PERMIT NO. **CP-GLBA035-98**

This Concession was previously authorized pursuant to
PERMIT NO. CP-GLBA035-92

NAME OF CONCESSIONER: **Glacier Bay Sea Kayaks**

d.b.a.: _____

ADDRESS: **P.O. Box 26**

CITY, STATE, ZIP CODE: **Gustavus, AK 99826**

PHONE NUMBER: **(907) 697-2257**

The above, hereinafter referred to as "Concessioner", is hereby authorized and agrees to provide sea kayak rental services for the public within Glacier Bay National Park & Preserve.

This permit shall be for the term of three years from April 1, 1998, through December 31, 2000, subject to the following terms and conditions:

1. Revocation. It is expressly understood and agreed that this permit may be revoked at any time at the discretion of the Director without liability to the Government of any nature.

2. Transfer or Assignment. The Concessioner shall neither transfer nor assign this permit, nor grant any interest or privilege therein without prior written approval of the Director. Such approval is subject to the requirements of 36 CFR part 51 (as are or as may be set forth therein).

3. Facilities and Services. (a) The Concessioner shall maintain and operate the concession in such manner as the Director may deem satisfactory and shall provide the assets and personnel necessary therefor.

(b) An Operating Plan and/or Maintenance Plan which more specifically describes the Director's requirements may be developed in consultation with the Concessioner and reviewed on an annual basis. Adjustments to the Operating and/or Maintenance Plan may be made by the Superintendent as required. The Operating Plan and/or Maintenance Plan established by the Superintendent shall not amend or alter the material rights and liabilities of the parties to this PERMIT.

(c) The Director reserves the right to determine and control the nature, type and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Food service operations under this permit and the administration thereof by the Director shall be subject to the United States Public Health Service requirements. Vehicle operations under this permit and the administrations thereof by the Director shall be subject to the Department of Transportation (DOT) requirements related to regulations on passenger vehicles for hire.

(d) Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health. The Concessioner shall, as a part of complying with the National Park Service's Safety and Occupational Health Policy, develop, maintain, and implement a written Documented Loss Control Management Program, to be approved by the Superintendent acting through the Director.

4. Rates. (a) All rates and prices charged to the public by the Concessioner shall be subject to regulation and approval by the Service.

(b) The Concessioner will provide Federal employees conducting official business reduced rates for essential transportation and other specified services, in accordance with procedures established by the Director.

5. Lands and Buildings.

(a)(1) The Director hereby assigns for use by the Concessioner during the term of this PERMIT, certain parcels of land, if any (as described in Exhibit B hereto), appropriate to conduct operations hereunder. No government improvements are assigned to the concessioner.

(a)(2) The Director reserves the right to withdraw such assignments or parts thereof at any time during the term of this PERMIT without liability of any nature.

(a)(3) Any permanent withdrawal of assigned lands or Government Improvements which are essential for conducting the operation authorized hereunder will be considered by the Director as a revocation of this PERMIT.

(b) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements affixed to or resting upon the lands assigned hereunder in such manner as to be part of the realty, if any, constructed or acquired by the Director and assigned to the Concessioner by the Director for the purposes of this PERMIT.

(c) The Director shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the Area.

6. Concessioner Structures. The Concessioner may construct or install upon the assigned lands such structures as are necessary or desirable for the operation permitted hereunder, subject to prior approval by the Director of the location, plans and specifications thereof. These structures must be movable, temporary in nature and not affixed to the realty in any permanent manner. Upon termination of this permit, or termination of any renewal thereof, the Concessioner shall remove any such structures and shall restore the site thereof as to nearly a natural condition as possible at no cost to the United States of America. Any such structures as have not been removed by the Concessioner within six (6) months following terminations of this permit, or termination of any renewal thereof, shall become the property of the United States without compensation therefor. However, if any such structures are required to be removed by the Director upon the termination of the permit, and the Concessioner fails to do so within the aforesaid six (6) months, they may be removed by the Director and the Concessioner agrees to pay the cost of such removal. The Concessioner shall obtain no possessory interest or other compensable interest of any nature in such structures. Existing approved structures are shown in Exhibit B.

7. Accounting Records and Reports. The Concessioner shall maintain an accounting system whereby its accounts can be readily identified with its system of accounts classification. The Concessioner shall submit annually as soon as possible but not later than sixty (60) days after the 31st day of December, a financial statement for the preceding year in the format prescribed by the Service and such other reports and data, including, but not limited to, operations information as may be required by the Service. Such information is subject to public release to the extent authorized by law or established policies and procedures of the Director. The Director and Comptroller General of the United States, or

any of their duly authorized representatives shall at any time up until the expiration of five (5) calendar years after the expiration of this permit, have access to and the right to examine any of the Concessioner's pertinent books, documents, papers, and records, including Federal and State income tax returns (collectively "documents"), and such documents of any proprietary or affiliate companies of the concessioners.

8. Fees.

(a) For the term of this PERMIT, the Concessioner shall pay to the Director for the privileges granted herein, fees as follows: A franchise fee equal to the greater of two percent (2 %) of the Concessioner's gross receipts, as herein defined, for the preceding year or portion of a year or one hundred dollars (\$100.00).

(b) The franchise shall be due November 15 of each year of operation under this permit. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the Concessioner's annual financial statement. Overpayment shall offset against the following year's franchise fees due.

(c) An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the 15-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d) The term "gross receipts" as used in this PERMIT shall mean the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this PERMIT, and commissions earned on contracts or agreements with other persons or companies operating in the Area, and excluding gross receipts from the sale of genuine United States Indian and native handicraft, intracompany earnings on account of charges to other departments of the operation (such as laundry), charges for employees' meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the Area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies, and amounts received as a result of an add-on to recover utility costs above comparable utility charges. All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts.

9. Insurance and Indemnity. The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgements and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, arising out of the activities of the Concessioner, his employees, subcontractors or agents under this PERMIT.

(a)(1) The Concessioner shall purchase at a minimum the types and amounts of insurance coverage as stated herein and agrees to comply with any revised insurance limits the Director may require during the term of this PERMIT.

(a)(2) The concessioner shall provide the Director with a Statement of Concessioner Insurance and Certificate of Insurance at the inception of this PERMIT and annually thereafter, and shall provide the Director thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(a)(3) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts if such prove to be inadequate or otherwise insufficient for any reason whatsoever.

b. Property Insurance. Not required.

c. **Public Liability.** The Concessioner shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operations authorized hereunder. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than \$300,000 per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.

(c)(1) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured. In that event, the policy shall provide that the insurance company shall have no recourse against the Government for payment of any premium or assessment.

(c)(2) The Concessioner shall also obtain the following coverages at the same limits as required for comprehensive general liability insurance unless other limits are specified:

- (1) Automobile liability to cover all owned, non-owned, and hired vehicles used in the Park
- (2) Alaska Statutory Workers' compensation

10. Utilities.

(a) The Director may furnish utilities to the Concessioner, for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Director in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Director in effect at the time of billing.

(b) Should the Director not provide such utilities, the Concessioner shall, with the written approval of the Director and under such requirements as the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area.

11. Lien. As security for the faithful performance by the Concessioner of all its obligations under this permit, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the area.

12. Nondiscrimination. The Concessioner shall, in addition to other laws and regulations which may be applicable to its operations, comply with applicable requirements of (i) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (ii) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, P.L. 93-112 as amended in 1978, (iii) 41 C.F.R. Part 60-2 which prescribes affirmative action requirements for contractors and subcontractors, (iv) the Age Discrimination in Employment Act of December 15, 1967 (P.L. 90-202), as amended by (P.L. 95-256) of April 6, 1978, and (v) the Architectural Barriers Act of 1968 (P.L. 90-480). The Concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public including those set forth in Exhibit "A" attached hereto and made a part hereof.

13. General Provisions.

- (a) Reference in this PERMIT to the "Director" shall mean the Director of the National Park Service, and the term shall include his duly authorized representatives. Reference in this permit to the "Service" shall mean the National Park Service.
- (b) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this PERMIT.
- (c) Notwithstanding any other provision hereof, the Director reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations, any

accommodations, facilities or services to Area visitors which are part of and appropriate to the Area's interpretive program.

- (d) Any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (e) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this PERMIT or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this PERMIT if made with a corporation or company for its general benefit.
- (f) This PERMIT may not be extended, renewed or amended in any respect except when agreed to in writing by the Director and the Concessioner.
- (g) The concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.
- (h) Operations must be in conformance with applicable federal, state, and local laws, regulations, and requirements for the type of service offered.
- (i) The concessioner shall conduct operations in the park as stated in the proposal submitted by the concessioner in response to the last prospectus or fact sheet issued for this permit, unless otherwise authorized by the Superintendent.
- (j) Nothing in this permit shall be construed as granting the concessioner any preferential rights to additional services or limiting the Secretary's authority to issue additional authorizations for similar services.
- (k) The permittee is authorized to provide land transportation from Gustavus to Bartlett Cove for their own customers in conjunction with this permit. This service is a courtesy rather than on a trip charge basis.
- (l) The concessioner is authorized to provide land transportation from Gustavus to Bartlett Cove for their own customers in conjunction with this permit. This service is a courtesy rather than on a trip charge basis.
- (m) The concessioner shall submit a summary of Concessioner activity each year on forms provided by the park.
- (n) The number of kayaks stored or rented at Bartlett Cove will not be increased without the prior approval of the Superintendent. In 1998, 43 kayaks may be available for general rental and no more than twelve un-rented kayaks may be stored at the land assignment.

Dated at _____, this _____ day of _____ 19____.

Glacier Bay Sea Kayaks

United States Of America

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Concession Permit - Exhibit A

Nondiscrimination

Section I

Requirements Relating To Employment And Service To The Public

A. EMPLOYMENT: During the performance of this PERMIT the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other permit or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a permit every Government permittor or subpermittor holding a permit that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the permittor's policies, practices and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession permit or with any of such rules, regulations, or orders, this concession permit may be canceled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession permits in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subpermit or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subpermit or vendor. The

Concessioner will take such action with respect to any subpermit or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subpermit or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

B. Construction, Repair, And Similar Permits: The preceding provisions A(1) through A(8) governing performance of work under this PERMIT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this PERMIT, and shall be included in all permits executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this permit, and for that purpose the term "PERMIT" shall be deemed to refer to this instrument and to permits awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to permitors awarded permits by the Concessioner.

C. Facilities: (1) Definitions: As used herein:

Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and permitors, and the successors in interest of the Concessioner; facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition; discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin, or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's permits or other forms of agreement for use of land made in pursuance of this agreement.

Section II: Accessibility

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

Part A Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to any agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Part B

Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped person.

Exhibit B

Land Assignment & Authorized Concessioner Structures

An approximately 0.3 acre parcel of land in the Bartlett Cove developed zone, located in: T40S, R58E, NW ¼, NW ¼, Section 33, CRM, as shown below. [Note: This site has been temporarily relocated.]

